

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

AARON HANSEN, ET AL.,	)	CASE NO: 2:13-CV-0242
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
TOTAL SCREEN SOLUTIONS, INC.,	)	Tuesday, June 3, 2014
ET AL.,	)	(3:49 p.m. to 4:48 p.m.)
	)	
Defendants.	)	

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TELEPHONIC MOTION HEARING

BEFORE THE HONORABLE JASON B. LIBBY,  
UNITED STATES MAGISTRATE JUDGE

Appearances:	See Next Page
Court Recorder:	Arlene Rodriguez
Case Manager:	Kendra Bledsoe
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**APPEARANCES FOR:**

**Plaintiffs:**

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**Defendants:**

DANIEL D. PIPITONE, ESQ.  
MICHAEL A. HARVEY, ESQ.  
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Corpus Christi, Texas; Tuesday, June 3, 2014; 3:49 p.m.

Call to Order

**THE CLERK:** Hello, this is Kendra Bledsoe. I'm going to formally call the case now.

The Court calls Civil Action Number C-13-242, *Aaron Hansen, et al versus Total Screen Solutions, Inc., et al.*

Now may I have appearances from Counsel, please?

**MR. MOULTON:** David Moulton for the Plaintiffs.

**MR. PIPITONE:** Your Honor, I'm Dan Pipitone, I'm one of the lawyers for the Defendants.

**MR. HARVEY:** Michael Harvey for the Defendants.

**THE COURT:** Good afternoon. This is Judge Libby. I'm a U.S. Magistrate Judge here in Corpus Christi. Judge Ramos has referred your motion and responses and replies to me for my consideration.

Before we get too far down the line, let me start with Mr. Moulton. Is that how you say it, say it again for me, Mr. Moulton, is --

**MR. MOULTON:** Molten like lava, but it's spelled like how you want to say it.

**THE COURT:** All right, Moulton, Mr. Moulton. Do you still need the assistance of the Court on these pending matters?

**MR. MOULTON:** Yes.

**THE COURT:** Okay, and then, Mr. Pipitone, do you

1 believe you still need the Court's assistance?

2           **MR. PIPITONE:** If I may defer to Mr. Harvey. He's  
3 worked with Mr. Moulton on these issues.

4           **THE COURT:** Okay, Mr. Harvey?

5           **MR. HARVEY:** Yes, your Honor, we do need -- probably  
6 some direction on these issues. We've tried to work with  
7 Plaintiffs' Counsel on his motion to compel; however, the  
8 issues are not settled and, unfortunately, we haven't been able  
9 to get all of them settled.

10           We are also looking at, and I'm not sure if this is  
11 before the Court, what the Court is referring to, but we're  
12 also looking at filing our own motion to compel probably within  
13 the next week, again, working with Mr. Moulton on --

14           **THE COURT:** Okay. Well, we'll see what we can do to  
15 avoid the necessity of any further discovery motions.

16           What I -- I had this referred to me today by Judge  
17 Ramos and I've done what I can to get up to speed on the  
18 litigation.

19           I don't know that I'm going to be able to resolve  
20 everything today, but what I would like to do, because you-all  
21 have taken time out of your afternoon to be here, is to provide  
22 some guidance on -- not guidance, to provide some rulings on  
23 some of these issues to tell you how -- to give you an  
24 indication of how I will rule on certain discovery matters and  
25 to basically kind of see if I can help you push through these

1 issues and move forward with the litigation.

2           And then if there are still matters that are  
3 outstanding, basically what I really need to rule on these is a  
4 -- kind of a point by point Brief where the issues are set  
5 forth kind of succinctly, and so that we can kind of go through  
6 them one at a time. But I'm going to try to do some of that  
7 now based on the pleadings that I have. And so, basically, the  
8 long and the short of it is I'm going to try to rule on some of  
9 these issues now, and then if there is still a need at a later  
10 date I'll order the parties to confer, and then to file a --  
11 basically a joint-kind of status report on what the issues are  
12 that need a ruling. And then we'll -- we'll set it for another  
13 hearing and we'll go through those remaining issues one by one.

14           So let me just start by pulling out the documents and  
15 getting organized. And I will just start by stating for  
16 purposes of the Plaintiffs' objections to the Defendants'  
17 general objections, I've read the Defendants' responses, and  
18 the Defendant has stated that it is not withholding any  
19 information based on general objections and they, otherwise,  
20 are answering the questions.

21           So this is what I'm going to do with regard to  
22 general objections:

23           To the extent that there are any general objections  
24 that have not specifically set forth the basis for not  
25 answering the question, I'm going to strike the general

1 objections and require the Plaintiff to set forth -- or the  
2 Defendant to set forth with specificity any objections if the  
3 Defendant is seeking to withhold any information or not;  
4 otherwise answer the question.

5 Now let's move onto a specific question.

6 Let's look at Interrogatory Number 2, and that is the  
7 Interrogatory from the Plaintiff was:

8 "Identify any workers, whether independent  
9 contractors or employees who, during the relevant  
10 time period performed or are performing services that  
11 are similar or are the same or similar to those that  
12 Plaintiffs performed for Defendants, and state  
13 whether you classified them as employees or  
14 independent contractors?"

15 First off, Mr. Moulton, what's the relevant time  
16 period?

17 **MR. MOULTON:** The relevant time period was defined in  
18 our definitions of the three-year period prior to commencement  
19 of the lawsuit. What we really could do at this point, though,  
20 is call the three-year period from today because, you know, we  
21 have the conditional certification order now and so the --

22 **THE COURT:** Basically three years back from today?

23 **MR. MOULTON:** Right.

24 **THE COURT:** Okay, and is -- Mr. Harvey, are you  
25 speaking for the Defendants for this hearing?

1           **MR. HARVEY:** Yes, your Honor, I am.

2           **THE COURT:** Is there any objection to Interrogatory  
3 Number 2?

4           **MR. HARVEY:** Your Honor, our objection -- original  
5 objection was that it was premature. Now that the Court has  
6 ruled on the conditional certification, our -- with respect to  
7 Interrogatory Number 2 and not to kind of hygienic (phonetic)  
8 the process, but with respect to the first category of  
9 documents, Interrogatory Number 2, Request Number 5 and Request  
10 Number 6 to replace 7 and 8, our position is that the Court has  
11 ordered that this information be identified, I believe it's  
12 seven days from -- to tomorrow. I could double-check the date,  
13 but the order of the Court is that on conditional certification  
14 that we're to produce the last known name, address, email  
15 address and telephone numbers of potential Class members --  
16 essentially all (indiscernible) for the last three years.

17           Our position is that that's what was relevant to the  
18 case, the Court has essentially issued an order, ruled on  
19 what's relevant and we're happy to follow that order.

20           But we believe that the information that was  
21 requested from the Defendants was first premature, and now it's  
22 overbroad in the sense that it or in the text that it is over  
23 what the Court has ordered us to produce in the initial  
24 Certification.

25           **THE COURT:** So basically that issue has been --

1           **MR. MOULTON:** Your Honor, if I could respond to that?

2           **THE COURT:** Let's --

3           **MR. MOULTON:** I'm sorry.

4           **THE COURT:** Let's not go back and forth on issues  
5 that are resolved, let's just kind of cut to the chase.

6           **MR. MOULTON:** Well, it's not -- it's not resolved  
7 though.

8           **THE COURT:** Okay, tell me why.

9           **MR. MOULTON:** Because the order for the conditional  
10 certification only covers names, addresses, telephone numbers,  
11 email addresses to the extent that they know them.

12           But some of these questions are actually a little bit  
13 more information which is also relevant so, you know, their  
14 actual positions, their job titles and also the locations where  
15 they worked. For example, Number 6.

16           **THE COURT:** Okay, so --

17           **MR. MOULTON:** And if they have any kind of employee  
18 or contractor number, so there's really a little bit more  
19 information there. I hear you, you know, that they've been --  
20 you know, I understand that they've been -- they have been  
21 ordered to produce some of this now.

22           **THE COURT:** I think the Defendants have indicated a  
23 willingness to -- to answer those questions.

24           I'm going to order that the Defendants answer  
25 Interrogatory Number 2.



1                   And that leads us to the document request. Where  
2 is --

3                   **MR. MOULTON:** Your Honor -- I'm sorry, your Honor.

4                   **THE COURT:** Who is this?

5                   **MR. MOULTON:** This is Mr. Moulton.

6                   **THE COURT:** Okay.

7                   **MR. MOULTON:** And we were grateful for that ruling,  
8 that's great. And she has already ordered that. But I'm  
9 noticing, in particular, it's Number 6, which it provides for  
10 the positions, job titles, locations where they worked. You  
11 know, we need that information as well. I don't want to get  
12 that lost, I don't want that --

13                   **THE COURT:** I'm working my way through the -- I'm  
14 working my way through the motion, Mr. Moulton.

15                   **MR. MOULTON:** Oh, okay, I thought you were just --

16                   **THE COURT:** Hold your shorts on.

17                   **MR. MOULTON:** I'm sorry. Go ahead.

18                   **THE COURT:** All right, so that's Interrogatory Number  
19 2, motion to compel granted.

20                   Interrogatory Number 6, requests -- or Request Number  
21 6. Is that the one you're asking about in order of your  
22 motion, Mr. Moulton?

23                   **MR. MOULTON:** Your Honor, Interrogatory Number 6,  
24 which is the computer readable version of Number 5. To the  
25 extent that any of this information is available in computer

1 readable format, we want that so we'll have --

2 **THE COURT:** Okay.

3 "Computer -- computer readable data identifying every  
4 individual you identified in response to  
5 Interrogatory Number 2 by name, position, job titles,  
6 locations at which they worked for TSS, employee or  
7 contractor number if applicable, last known address  
8 and telephone number."

9 Okay. Mr. Harvey --

10 **MR. HARVEY:** Yes, your Honor.

11 **THE COURT:** -- what's the Defendants' position on  
12 Interrogatory Number 6?

13 **MR. HARVEY:** Our point, your Honor, is that the Judge  
14 has already entered an order on conditional certification  
15 saying now what we have to produce is the last known address,  
16 email address and telephone numbers of these individuals.  
17 Additionally, what she had told us in order is what she  
18 believes is relevant and that these things: the names,  
19 addresses, email address and telephone number. Now, Plaintiff,  
20 by way of discovery, has tried to expand what she believes is  
21 relevant, and we believe that simply isn't relevant.

22 The contract number of a particular employee or the  
23 location in which she worked isn't relevant to whether or not a  
24 plaintiff in the case, or a potential plaintiff in the case, is  
25 an independent contractor or employee. It often doesn't help

1    them find or locate or identify potential plaintiffs and that's  
2    allegedly what the purpose of this discovery is, to identify  
3    Class members.

4               What they need is what the Court has ordered and  
5    that's what we're happy to give them.

6               **MR. MOULTON:** Your Honor, that just -- that's not  
7    right. You know, the order -- we've got for conditional  
8    certification is to get the identification information for the  
9    Plaintiffs is to make sure they get a notice. This discovery  
10   is about identifying where people worked, when they worked, you  
11   know, how they're identified on payroll so that we can find out  
12   who the witnesses were, who worked with them, you know, to get  
13   that --

14              **THE COURT:** Okay, let me interrupt, Mr. Moulton. I'm  
15   sorry for interrupting, but let me interrupt.

16              What's the -- can you describe for me what you mean  
17   by "computer readable data," Mr. Moulton?

18              **MR. MOULTON:** Right. So if this -- if we get the  
19   information available today where they can just export it to  
20   like an Excel format, likely would come out of a lot of  
21   employee data base software, then that's the way we want it.

22              The other request we have asks for it on paper if  
23   it's not available in electronic format.

24              **THE COURT:** Okay.

25              **MR. MOULTON:** It's just avoidance having to re-type

1 it.

2 **THE COURT:** I understand. Okay, for --

3 **MR. HARVEY:** A real quick point, your Honor, on that,  
4 I mean, I'm glad you raised that issue because (indiscernible)  
5 see a lot in here.

6 My understanding from Mr. Moulton is what he wants is  
7 not, you know, us to take an information (indiscernible). This  
8 information that he has requested, like, you know, around eight  
9 or nine different things, it wouldn't be found in our pieces of  
10 -- like computer software or computer data throughout our  
11 company. It isn't -- exist.

12 What he would like us to do is go through each of  
13 those programs, take pieces of information and create it in --  
14 I believe what he talked about was an Excel sheet so that we  
15 take, you know, the name from one source and, you know,  
16 potentially the address or email from another -- another source  
17 and I don't think that's what the Rule requires us to do.

18 The Rule requires us to produce the information in a  
19 readily -- that's readily accessible in a readily usable form.  
20 She doesn't require us to take it from five different sources  
21 and create an Excel sheet and then potentially send it over to  
22 Mr. Moulton with a big note on it.

23 To the extent that that information exists, we're  
24 happy to take it from that individual source and put it in  
25 through a readily usable form. We don't believe that we should

1 have to take it from five different sources and create one  
2 document, but that's an absolute -- an undue burden.

3 **THE COURT:** Okay. This is my ruling. For request or  
4 Interrogatory Number 6, the Plaintiff's motion to compel is  
5 granted.

6 However, I am not ordering the Defendant to compile  
7 that data and prepare a spreadsheet for the Plaintiff. It will  
8 -- if it is computable -- or if it is in a format that is  
9 computer readable, it shall be disclosed in a manner that's I  
10 guess accessible and usable by the Plaintiff. But to be clear,  
11 I'm not ordering the Defendant to basically prepare the  
12 Plaintiff's case for the Plaintiff. And so, basically, turn it  
13 over in the format that you have it, but try to do so in a way  
14 that does not burden the Plaintiffs' ability to access and use  
15 that information. So that's Request -- or Interrogatory Number  
16 6.

17 Moving onto Interrogatory Number 7, to the extent  
18 that --

19 **MR. HARVEY:** And just for clarification, your Honor,  
20 I think we're talking about Request Number 6 instead of --  
21 request for production.

22 **THE COURT:** Oh, is it request for production?

23 **MR. HARVEY:** Yes.

24 **THE COURT:** You're right, I'm sorry, yes, it is a  
25 request for production.

1           **MR. MOULTON:** Oh, correct. Right. And so -- and,  
2 your Honor, and Request Number 5 is the exact same request  
3 except that paper if it's not available in electronic so my  
4 only concern is if they say "Well, we don't have an electronic  
5 period" and they wouldn't have to do it. So if it's available  
6 -- just like your order, we're not asking them to create new  
7 things, but --

8           **THE COURT:** Right, but if it's available in an  
9 electronic --

10          **MR. MOULTON:** -- software export or come out, you  
11 know.

12          **MR. HARVEY:** I don't see that distinction in Request  
13 Number 5. It looks like the distinction is Number 5, you ask  
14 for computer readable data for all Class members, which I  
15 assume would just be current claimants; whereas Request Number  
16 6 asks for computer readable data for every individual you  
17 identified in response to Interrogatory Number 2.

18          **MR. MOULTON:** Oh, he's right. I got that mixed up,  
19 so, right, so it's actually later on that we ask for it in  
20 paper. It's the same information, it's just -- it's just if  
21 it's available in electronic we want it, you know; and  
22 obviously if it's not, we want that information in whatever  
23 format it is. Just, it's our prerogative under the rules to  
24 ask for it in an electronic format that we specify.

25          **THE COURT:** Mr. Moulton, I'm doing the best I can

1 here, but I'm going through your motion and request for  
2 production Number 5 might be referenced somewhere in your  
3 motion, but it's not -- not in the document that I have right  
4 in front of me and so I'm going through your motion and I'm  
5 ruling on these.

6 I think -- my intent is to give the parties an idea  
7 of how I'm going and what I'm ruling; and if there are matters  
8 that are not specifically addressed in this hearing, I really  
9 expect the parties to get together and look how I ruled and to  
10 anticipate how I would rule if it were in front of me again and  
11 work together to -- to resolve your discovery disputes.

12 So let me keep going, and if there are -- if there is  
13 -- if there are unresolved issues at the end of this hearing I  
14 will give the parties an opportunity to speak.

15 And so when I refer to the motion, the motion --  
16 okay, refers to Requests, so that's Requests for Production.

17 The next document on the -- or the next issue on the  
18 Plaintiff's motion is Request Number 7, I guess that's request  
19 for production Number 7, and it reads:

20 "To the extent any Class members are not identified  
21 by the electronic data produced in response to the  
22 fourth document request, any and all documents  
23 providing that information in hard copy."

24 Mr. Moulton, what's that about?

25 **MR. MOULTON:** Right. So we're -- basically it's the

1 same information, but like we were talking about earlier, if  
2 it's not available, because we've had numerous conversations  
3 about this with Total Screen Solutions, and there seems to be a  
4 great reluctance on their part to share anything that's  
5 electronic. That's the way I perceive it, but we've asked also  
6 that if it's not electronically available, to go ahead and  
7 produce it in a paper format, and so 7 or 8 are mirroring that  
8 (indiscernible) and also for the -- you know, for the other --  
9 basically the individuals as much as they can. Hopefully the  
10 information we were just talking about, you know, locations  
11 where they were, names, addresses, phone numbers.

12 **THE COURT:** All right. Give me a moment to digest  
13 the request.

14 All right, Mr. Harvey, what say the Defendant?

15 **MR. HARVEY:** Your Honor, based on your prior ruling I  
16 don't have an issue with this. You know, in my mind's eye, I  
17 stand by my objection that I believe it's overbroad, the  
18 information that is being requested would basically require a  
19 ruling. I think, you know, asking for the paper documents if  
20 we don't have an electronic document is fine, but based on the  
21 Court's prior ruling, I would expect a Court ruling would  
22 overrule this objection.

23 The one kind of issue or question I do have between 7  
24 and 8 and 5 and 6, it looks like Plaintiff, first of all, that  
25 the Court may not find the relevance, this information as to



1 all -- he did make a distinction in the two requests, between  
2 Class members and then all individuals that are identified, so  
3 the current Plaintiffs versus every potential Plaintiff that's  
4 out there, which I believe I'm looking in the neighborhood of  
5 probably over 100.

6 My only question is is the Court ordering that we  
7 produce this information relevant -- or this information that  
8 is stated as relevant as to the entire potential Class or just  
9 the current Class, and add potential Plaintiffs  
10 (indiscernible)?

11 **THE COURT:** All right. Are we talking about 100  
12 people?

13 **MR. HARVEY:** My understanding, I believe we're still  
14 trying to work on this information, is that it's going to be  
15 over 100, and likely over 125.

16 **THE COURT:** Okay. That is a lot of people, but I  
17 think based on Judge Ramos's order, to answer your question,  
18 yes, I'm going to order it to include the larger group of  
19 people, not just people who have been identified as Claimants  
20 or Plaintiffs at this point, so for the whole potential Class,  
21 I guess that's the 120-something people.

22 **MR. HARVEY:** Okay, your Honor. Then based on your  
23 rulings, I believe -- it would be my expectation that Request  
24 Number 7 and Request Number 8 would be our objections would be  
25 overruled.

1           **THE COURT:** Okay. All right. Now -- all right, let  
2 me just go -- jump forward to Page 13 of the motion.

3           "Information regarding Total Screen Solutions'  
4 clients, relevant interrogatory and document  
5 requests:

6           "Interrogatory Number 3: Identify all companies or  
7 individuals Defendants billed for Plaintiffs'  
8 services."

9           Okay. Mr. Moulton, why do you need that information?

10          **MR. MOULTON:** Because, you know, we're -- this is an  
11 independent contractor case, right? The Defendants allege the  
12 Plaintiffs were independent contractors. We believe -- we  
13 allege that they are employees, and so that's the heart of the  
14 dispute here and that's going to determine whether or not they  
15 are entitled to overtime.

16               Now part of the analysis about whether or not someone  
17 is an independent contractor or employee is going to be, you  
18 know, supervision and control. There's also going to be issues  
19 about who provides the investment in tools and materials that  
20 the Plaintiffs use.

21               Now Total Screen Solutions takes the view that the  
22 company men, the clients, control or supervise the Plaintiffs,  
23 and we take the position that they are controlled and  
24 supervised by TSS.

25               We also take the position that TSS is providing the

1 investment and providing the tools and materials, and TSS takes  
2 the opposite view that the company men or clients provide that,  
3 and so when we asked them for information about who are these  
4 clients, we're trying to find out who are these witness, these  
5 company men, who are they? How can we get in touch with them  
6 to ask them are they providing it, are they supervised?

7 And, also, because our guys are working out on these  
8 rig locations where the company men are, Total Screen Solutions  
9 (indiscernible) didn't keep records of the hours worked, and so  
10 these company men, these clients, are going to be potentially  
11 the only witnesses about, you know, how many hours our guys  
12 worked, what they were doing, you know, what kind of skills are  
13 involved, and that's also part of the independent contractor  
14 analysis, so --

15 **THE COURT:** Can you give me an example, just to help  
16 me kind of understand, when you say "all companies or  
17 individuals Defendants billed for Plaintiff services," can you  
18 give me an example of what you're talking about? Just like a  
19 concrete example.

20 **MR. MOULTON:** Right, so -- Right, as a concrete  
21 example. Let's say we can have a Plaintiff assigned to work on  
22 a rig that's actually operated by Mehurst (Phonetic), for  
23 example. TSS has a contract with Mehurst to provide the  
24 Plaintiffs to the account to provide services, which involves  
25 control, they are moving the cuttings out of the drilling

1 fluid, and to do that they operate some big machine and such,  
2 centrifuges and these things called "shaker tank" and track  
3 hoes and, you know, there's just a lot of heavy equipment and  
4 machinery out there, right?

5 And the issue is are the Plaintiffs independent  
6 contractors or employees? Are they -- are they subject to the  
7 direction and control of Mehurst? Are they under the direction  
8 and control of TSS?

9 You know, did Mehurst provide the equipment and  
10 tools? Did TSS provide the materials and tools?

11 Did the company men on the Mehurst drilling site, did  
12 they supervise the Plaintiffs? Do they know how many hours the  
13 Plaintiffs worked?

14 We don't know the answers to those questions unless  
15 we can know who they are to ask them.

16 **THE COURT:** Mr. Harvey?

17 **MR. HARVEY:** Your Honor, I think our main objection  
18 on this, I guess, category of documents is that you're asking  
19 potentially for our client list and our client contracts as  
20 you'll see in the next couple of requests.

21 This information is confidential, it's trade-secret  
22 client information and we believe this should be protected by  
23 -- by a protective order, a protective order.

24 My understanding, I haven't been in this case as long  
25 as Mr. Moulton, but it's my understanding from prior counsel

1 that there was a protective order that the parties were working  
2 on and at some point those conversations broke down.

3 Our position is we're -- I'm happy to hand over the  
4 names of the companies that Plaintiffs would have billed for,  
5 but it should be protected -- potentially a protective order.

6 **THE COURT:** Okay. I will grant the Plaintiff's  
7 motion to compel the answer to Interrogatory Number 3 subject  
8 to the parties agreeing on a protective order, and if you can't  
9 agree on a protective order, file a motion and we'll have a  
10 hearing on it, but I certainly think that the parties should be  
11 able to agree on a pretty straightforward protective order.

12 So I'm granting it subject to the parties executing a  
13 -- a protective order that's agreed to by the parties.

14 All right, let me take a note on that.

15 **(Pause)**

16 **THE COURT:** Okay, and then Request Number 2:

17 "All contracts between TSS" and I guess this is a  
18 request for production Number 2.

19 "All contracts between TSS and companies or  
20 individuals TSS billed for Plaintiff services  
21 during the relevant time period."

22 "All contracts between TSS and the companies or  
23 individuals TSS billed for Plaintiff services."

24 All right, Mr. Moulton?

25 **MR. MOULTON:** Your Honor, okay, so if we go back, for

1 example, let's say TSS had a contract with Mehurst or any, you  
2 know, Precision (Phonetic) or any other kind of drilling  
3 company, right? And so they're going to have a contract and we  
4 anticipate that that contract will -- is going to have  
5 information about the client, or the client TSS so we can use  
6 it to find out the witnesses I just talked about. It's also  
7 going to specify who is providing what, which is essential to,  
8 you know, where is the investment coming from for these workers  
9 to work. It's going to possibly delineate the duties and what  
10 is expected of these (indiscernible) and the skill that they're  
11 required to perform on the job that's relevant to the  
12 independent contractor analysis.

13 **THE COURT:** Now you only need the portions of the  
14 contracts relating to the Plaintiffs' services though, right?  
15 Like you don't need the details of the -- like the cost of the  
16 contract or the manner in which the contract would be executed,  
17 you're looking for how the Plaintiffs were going to be used as  
18 employees or subcontractors, right?

19 **MR. MOULTON:** That's -- that's part of it and -- but  
20 I think the costs are relevant, too, because the -- the  
21 economic realities test is going to require an Officer of the  
22 Court or the jury, whoever is making this decision, to compare  
23 the relative investments of the parties, and so they're going  
24 to have to compare the relative investments of Total Screen  
25 Solutions and the jobs the Plaintiffs were performing --

1 (indiscernible) what the Plaintiffs are (indiscernible) and so  
2 we need to know which -- basically what skin (phonetic) each of  
3 them had in the game.

4 And there's more to it than that, too. It's common  
5 in agreements where companies are sharing or leasing or co-  
6 employing (indiscernible) -- you know, workers, to have  
7 descriptions about that and have -- and talk about how they're  
8 going to be sharing and co-employing the players, and so that's  
9 also relevant to knowing what the relationship is between these  
10 Plaintiffs and Total Screen Solutions and the costs  
11 (indiscernible).

12 So I don't know if you can start at the outset to  
13 know what parts are going to be relevant and what aren't, but  
14 we're certainly are going to do it through a protective order,  
15 just like we just talked about.

16 **THE COURT:** Okay. Mr. Harvey, your input?

17 **MR. HARVEY:** Yes, your Honor. I mean, I think we can  
18 kind of highlight the fundamental difference between what I  
19 believe the Rule statements go for process of discovery is and  
20 what Mr. Moulton believes the process of discovery is.

21 It seems to be that Plaintiffs believe they can ask  
22 for everything under the moon, and we're supposed to produce it  
23 and then they'll decide what's relevant to this case as opposed  
24 to specifically tailoring their discovery request to defenses  
25 and clients in this case.

1           As the Court pointed out the vast majority of these  
2 contracts, the perception of these contracts are relevant is in  
3 control and our position is that none of this is relevant. Mr.  
4 Moulton hasn't been able to articulate anything I've heard that  
5 makes any sense that it would be relevant to this case. The  
6 information that he's talking about is about identifying the  
7 potential companies and potential witnesses he's going to get  
8 in an Interrogatory. The Court has already ordered us to  
9 produce that information so he doesn't need the contract.

10           Whether or not and by what rate we're were making  
11 money off these contracts isn't germane to the issue of the  
12 relationship between TSS and these individual employees,  
13 whether TSS made \$600 a day or \$1,000 a day from these  
14 individual contracts, that has absolutely no bearing on whether  
15 or not an individual Plaintiff is an independent contractor or  
16 an employee, or even defenses to independent contractor or  
17 being an employee.

18           This is simply a fishing expedition and I think, to  
19 some degree, a harassment to try to get information that  
20 Plaintiff knows is confidential and should be protected by  
21 trade secret, and that's really the objective here.

22           **THE COURT:** Okay. I --

23           **MR. MOULTON:** Your Honor.

24           **THE COURT:** Mr. Moulton?

25           **MR. MOULTON:** If I could respond to that?



1           **THE COURT:** Yeah, go -- go ahead.

2           **MR. MOULTON:** I'd like respond that one -- I'm sorry?

3           **THE COURT:** Go ahead.

4           **MR. MOULTON:** Yeah. One of the factors in the --  
5 there are several factors in the economic realities test,  
6 right, and one of them is the opportunity for profit or loss,  
7 whether or not the Plaintiff's had the opportunity for profit  
8 or loss and, you know, the contract is going to -- they're  
9 going to say who is providing what and who is going -- but also  
10 we're going to see who is setting the prices and these are  
11 things that are going to come out with contracts. We need to  
12 know that. We need to know what Total Screen Solutions is  
13 providing, what the companies are providing --

14           **MR. HARVEY:** Excuse me, your Honor.

15           **THE COURT:** Well, there's -- I've --

16           **MR. MOULTON:** -- and our documents will show that.

17           **THE COURT:** Let me step in here real quick, and this  
18 is what I'm doing.

19           Just to keep this moving I'm going to find that the  
20 request is overbroad as it's stated in terms of asking for all  
21 contracts and essentially all information in those contracts,  
22 so I'm going to deny it in part, but grant it in part.

23           And I'm going to find that the Defendant shall turn  
24 over contracts or those portions of contracts relating to the  
25 employment activities of the Plaintiffs and the Plaintiffs'

1 services during that relevant three-year time period shall be  
2 turned over.

3 But I -- at this point I would allow the Defendants  
4 to redact or not to turn over the full contracts.

5 Now, Mr. Moulton, if, during the course of discovery  
6 -- I just think it's overbroad at this point, but if you're  
7 able to focus your -- after seeing the initial discovery, if  
8 you're able to focus a subsequent or a later need for -- for  
9 documents relating to the finances we can cross that bridge if  
10 we come to it, but at this point I'm going to limit it to  
11 contracts relating to the employment activities of the  
12 Plaintiffs.

13 **MR. MOULTON:** Of course --

14 **MR. HARVEY:** Your Honor, because the --

15 **MR. MOULTON:** -- sorry, which --

16 **THE COURT:** All right, let's -- let me jump in here.  
17 Let me ask -- let Mr. Harvey speak first this time, and then  
18 I'll come back to you, Mr. Moulton.

19 Mr. Harvey?

20 **MR. MOULTON:** Thank you.

21 **MR. HARVEY:** Thank you, your Honor. I appreciate  
22 your ruling and understand it.

23 My only additional request is that we subject that to  
24 a protective order, same as the information below  
25 (indiscernible) information that is contained in our contract

1 and could be (indiscernible) to client is confidential and  
2 trade secret. Thank you.

3 **THE COURT:** Granted. Mr. Moulton?

4 **MR. MOULTON:** Right. If I could add, the parts of  
5 the contract that deal with what -- we don't necessarily know  
6 -- at this point, right, we don't -- we can have it redacted to  
7 not know what the profit is for TSS right now, but I think that  
8 is relevant. I don't want to give that up, but at least to get  
9 started we need to know if the contract specifies what TSS is  
10 providing as far as solids (phonetic) control; in other words,  
11 are they providing centrifuges, the tanks, the pumps and the --  
12 and the track hoes, you know, that sort of stuff. We need to  
13 know if that's part of the contract they are actually providing  
14 because --

15 **MR. HARVEY:** And, your Honor, I mean, if we're -- if  
16 we're providing that -- those equipments, that material --

17 **MR. MOULTON:** (Indiscernible) So -- excuse me. So,  
18 we need if that's part of the contract because that goes to the  
19 core of this issue, you know, providing tools, materials and  
20 equipments that the Plaintiffs use in their job is one of the  
21 critical factors to show that TSS is the employer; and if  
22 that's in the contract, we think we should get that part that's  
23 -- so we'd like to have that, not just about the employment  
24 services, not just what their job (indiscernible) but also what  
25 TSS is providing for them to use.

1           **THE COURT:** Okay, this is what I'm going doing as --

2           **MR. HARVEY:** Then it is made (indiscernible) --

3           **THE COURT:** Just let me -- let me --

4           **MR. MOULTON:** If I could --

5           **THE COURT:** Nope, I'm going to rule. As the question  
6 -- or the request for production has been phrased here, I'm  
7 going to enter my ruling as I did. I'm going to limit it to  
8 the employment services of the Plaintiff.

9           However, I understand Mr. Moulton's position,  
10 although it was -- the request for production was not tailored  
11 in the way that you're asking for it, Mr. Moulton, and so at  
12 this point I'm going to deny that oral request to modify the  
13 request for production.

14           But, again, that's -- it's getting close to what I --  
15 I think I understand where you are going with that, and I also  
16 think that that's the type of thing that the Defendants -- or a  
17 Defendant in good faith can work with you on, but I'm not going  
18 to -- I'm not going to weigh into that issue at this point. I  
19 want to keep moving through the requests as they are before me  
20 in writing.

21           Which moves us to request for production Number 21,  
22 which reads:

23           "All invoices, bills, other requests for payment  
24 submitted to TSS clients for services performed by  
25 Plaintiffs."

1 Mr. Harvey, any objection to that?

2 **MR. HARVEY:** Yes, your Honor. The same objection,  
3 that it has no relevance to the relationship between the  
4 Defendants in this case and the Plaintiff.

5 Again, what Mr. Moulton -- Moulton, I'm sorry, is  
6 asking is what is the relationship between Defendants and their  
7 client in that what are we billing our client, and that's just  
8 not relevant to a determination of whether these guys are --  
9 the Plaintiffs are independent contractors or employees. It  
10 doesn't matter what our profit level was on our contracts are  
11 with our clients. What matters, really, is what the pay was to  
12 the individual Plaintiffs.

13 **THE COURT:** Mr. Moulton?

14 **MR. MOULTON:** Right. So this is -- what we're trying  
15 to find out here is we're trying to find out, you know, who --  
16 who is providing equipment, materials, the tools, the things  
17 the Plaintiffs use in their job. That's required under the  
18 economic realities test. It's required to show control. It's  
19 also required to show relative investments. It's also -- we  
20 can also see who is responsible for setting the prices, right?

21 That person who is truly in business for themselves  
22 gets to set the prices of the services and also the materials  
23 that they provide. If you hire a painter or a roofer, he's  
24 going to send you a bill for his time and also for some  
25 materials. He may have a markup, he may not. But the point is

1 who is in control of that, who is providing this? Is it  
2 Mehurst, is it TSS, or is it the Plaintiffs? And I can't think  
3 of any other documents, other than the contracts and these  
4 invoices and bills because they're going to actually address  
5 that and show us.

6 **THE COURT:** Okay, understood. I'm going to interrupt  
7 and I'm going to grant the Plaintiffs' motion to compel  
8 Discovery with regard to request for production Number 21. I  
9 believe that it's not overly burdensome for the Defendant to  
10 respond to that request for production, so Defendant shall.

11 Mr. Harvey, would you like that subject to the  
12 protective order, as well?

13 **MR. HARVEY:** Yes, your Honor, we would.

14 **THE COURT:** Okay, subject to the protective order.

15 All right, moving to the motion, improper designation  
16 of persons with knowledge, Interrogatory Number 4:

17 "Identify" -- this is the Interrogatory:

18 "Identify all individuals who may have knowledge of  
19 relevant facts."

20 Okay, Mr. Harvey?

21 **MR. HARVEY:** Your Honor -- and perhaps Mr. Moulton  
22 would like to explain exactly what he's asking for and what his  
23 issue is with our --

24 **THE COURT:** Right. And I understand. It is kind of  
25 broad just based on the way that it's raised.

1 Mr. Moulton, what are you looking for there?

2 **MR. MOULTON:** Your Honor, the reason why we phrased  
3 it like that, your Honor, is because Rule 26 phrases it exactly  
4 that way. They are actually required, under Initial  
5 Disclosures, to provide us all individuals who may have  
6 knowledge about the facts, and under Rule 26 actually it also  
7 states what knowledge they may contain. So all we're asking  
8 them to do then is to do what they're already required to under  
9 Initial Disclosing -- Initial Disclosures, but have the  
10 interrogatory verified by the client.

11 **THE COURT:** No, just a second. Let me look at Rule  
12 26 here.

13 **(Pause)**

14 **THE COURT:** Point me to where I need to look in Rule  
15 26 so I don't waste your time if you have it in front of you,  
16 Mr. Moulton or Mr. Harvey, just to help me get there.

17 **MR. MOULTON:** So the name and, if known, the address  
18 and the telephone number of each individual likely to have  
19 discoverable information along with the subject matter  
20 information that disclosing party may use to support its claims  
21 or defenses and must be used with (indiscernible)

22 And, you know, the cases that address this used that  
23 -- the phrase that we have chosen. It's just asking us to  
24 provide -- it's directing them to provide the witnesses, right?  
25 I mean, they have already -- there's -- we know that they have

1 identified several witnesses who provided declarations in this  
2 case. There's been -- for the Defense, there's been like six  
3 -- or five. Five or six --

4 **THE COURT:** Okay, let me ask this question.

5 **MR. MOULTON:** And they've never even --

6 **THE COURT:** Go ahead, I'm sorry. I interrupted.

7 **MR. MOULTON:** You know, and they have provided these  
8 -- these declarations and, you know, they signed them and  
9 everything, but we still don't know their -- their address or  
10 their telephone number. You know, we -- that's part -- they  
11 are required to provide that. This James Bruce Scott  
12 (phonetic), you know, we don't -- (indiscernible) identify any  
13 of their Rule 26 disclosures, but they've listed Defense  
14 Counsel's information, he's not a party. They are required to  
15 give us the name, address and telephone number of the  
16 witnesses, and that's what we're asking them do.

17 And now the other problem we have with it is that  
18 they also just used generic information. They used -- they say  
19 "All employees and representatives of Total Screen Solutions  
20 and they list here Defense Counsel's info at his old firm. And  
21 so who are these people? I mean, you don't get to --

22 **THE COURT:** I agree with you. I don't think that the  
23 Defendant can just say "All employees of Total Screen  
24 Solutions" and have that comply with -- with the Rule 26  
25 disclosures.



1 But, Mr. Harvey, your turn, what do you have to say  
2 about that?

3 **MR. HARVEY:** Sure, your Honor. I mean, Plaintiffs --  
4 Mr. Moulton has kind of made our point on the objection. If  
5 you look at the Rule it requires us to produce information and  
6 disclosure. Now Mr. Moulton wants the identical thing in an  
7 interrogatory. The Rules don't require us to perform -- to do  
8 Plaintiff discovery and that's what's going on here.

9 **THE COURT:** So let me just interrupt. Have you  
10 answered the question to the satisfaction of the requirements  
11 of Rule 26 in your disclosures?

12 **MR. HARVEY:** Your Honor, we have produced witnesses  
13 and are in the process of supplementing that list next week.  
14 Mr. Moulton will also be receiving the potential Plaintiffs in  
15 this case and we'll have their name and address and that  
16 information for them.

17 We're working on figuring out who all of these  
18 potentially relevant individuals are, individuals with  
19 particular relevant facts and working on several things on the  
20 list. At the time that we provided our disclosure, I don't  
21 personally track them, but my understanding is from prior  
22 Counsel that their intention was to provide everyone that they  
23 were aware of at that time.

24 **THE COURT:** Okay. So the answer at this point is no,  
25 but you intend and will comply with the requirements of Rule 26

1 and will provide this information to the Plaintiff, is that  
2 correct?

3 **MR. HARVEY:** Your Honor, we fully intend to comply  
4 with the Rule.

5 **THE COURT:** All right. So let me see how I'm going  
6 to phrase the answer on this.

7 So what I'm going to do is I'm going to grant the  
8 Plaintiff's motion to compel Interrogatory Number 4, but I'm  
9 going to say for the record that the Defendant doesn't have to  
10 answer it separately. The Defendant may comply with this --  
11 with the Court's order by supplementing its disclosures to  
12 provide the information required in Rule 26.

13 Is that satisfactory, Mr. Moulton?

14 **MR. MOULTON:** Yes, your Honor. And I just -- can I  
15 just clarify one point? We have had numerous discussions with  
16 Total Screen Solutions and -- at least previously, pretty much,  
17 and they've known about Clinton Shanefelter, Jr., Timothy  
18 Wilson, Jr. and Brandon Dudley East (all phonetic) as well as  
19 the company men who have testified in a reply for conditional  
20 certification, it's like about five witnesses they've known  
21 about for months.

22 The first three I mentioned, I think it was probably  
23 February when they filed a response to our motion, and we've  
24 asked them to identify these people and they haven't. We just  
25 want to -- part -- your ruling is fine, and agreeable to us,

1 but we want to make sure they understand that those people, as  
2 part of it, need to be identified --

3 **MR. HARVEY:** I have kind of two points on that, your  
4 Honor.

5 First of all, clearly Mr. Moulton has knowledge of  
6 them and they have been put on notice that those individuals  
7 exit and might have knowledge. That what the Rule requires.

8 Second is I haven't seen any supplement to  
9 Plaintiffs' discovery and, you know, if they have knowledge and  
10 believe these people have knowledge of potential facts  
11 certainly they should be supplementing their disclosures also.  
12 But, again, we're -- to the Court's point and I ask for a point  
13 today, we will comply with Rule 26 as the Court has ordered.

14 **THE COURT:** Okay.

15 **MR. MOULTON:** The brief -- part of the problem, your  
16 Honor, is that we don't -- we're not getting headway on this  
17 because it's not enough just to know their names. They have to  
18 -- we have to know their name, address and telephone number.

19 **THE COURT:** And I believe looking at Rule 26 --

20 **MR. MOULTON:** Rule 26 applies.

21 **THE COURT:** -- Rule 26, that that information would  
22 be required to be turned over, and -- and so I'm not making any  
23 conclusions about whether or not people have withheld names or  
24 not disclosed names. I know that during the course of  
25 litigation it's an evolving -- and discovery is an evolving

1 process, but I really don't want to see is I don't want to come  
2 back in later and find out that there are -- there are  
3 witnesses who have been withheld. I'm not making that finding  
4 now, but I'm just encouraging the people -- or the parties and  
5 the attorneys, Mr. Moulton and Mr. Harvey, that right now this  
6 is one of those log jams that we're working through and we  
7 haven't really gotten to a point where I have identified  
8 serious problems with the discovery process.

9 I -- my rule right now is to facilitate the discovery  
10 process. But I really don't want to have to get involved with  
11 essentially bad faith, and so I'm going to encourage both the  
12 Plaintiff and the Defendant to continue to work on these  
13 issues. But that's all I'm going to say about that for now.  
14 I'm going to move on now to request for production Number 4:

15 "All daily charge tickets or reports submitted,  
16 prepared or signed by Plaintiffs."

17 Mr. Harvey, is there any objection to that?

18 **MR. HARVEY:** Yes, your Honor, specifically the  
19 reports. That term, in and of itself, is so broad and so  
20 really kind of vague that it potentially includes every  
21 document the Plaintiffs have signed, and I think that truly  
22 what Plaintiff is looking for is kind of every single thing  
23 that has been signed by Plaintiffs, and we'll see that again in  
24 later discovery requests.

25 There are potentially reports out there on whatever

1 they may be that are not relevant to this case, not relevant to  
2 defenses and claims, so we believe the phrasing and the use is  
3 overbroad and for that reason our objection should be  
4 sustained.

5 **THE COURT:** Mr. Moulton?

6 **MR. MOULTON:** Yes, your Honor. So the first part are  
7 the daily charge tickets or reports -- part of the reason why  
8 it's being -- we probably phrased that more generally because  
9 there's a dispute (indiscernible) about what to call  
10 (indiscernible)

11 **THE COURT:** Okay, there's -- somebody is -- I'm sorry  
12 for interrupting, let me jump in here. Somebody was rubbing  
13 the phone. Could you step back, please --

14 **MR. MOULTON:** Oh, I apologize.

15 **THE COURT:** That's okay. Could you step back a few  
16 sentences, Mr. Moulton, just so -- I want to make sure that I  
17 hear and understand your position.

18 **MR. MOULTON:** Right. So when we requested these  
19 documents, all daily charge tickets or reports, there's a --  
20 we've had a disagreement with Total Screen Solutions about what  
21 to call documents. If we don't exactly know the name that they  
22 call the documents, they apparently don't exist. We -- if we  
23 find a name we'll show it to them and then they appear.

24 And so what we're asking for, first of all, are the  
25 daily reports that sit hands (phonetic) filled out every day,

1 and they have already produced many of them. However --

2 **THE COURT:** What is the "daily report?" Explain that  
3 to me.

4 **MR. MOULTON:** Right. And so -- and so the report  
5 that details what the worker did each day, who they checked in  
6 with, and it talks about what materials that they worked with  
7 and were provided. It's basically -- it's almost like a little  
8 work diary every day, and we're talking about a wage an hour  
9 case where there aren't records of hours worked and so it's  
10 part of it is, you know, picking out what days people worked,  
11 what they were doing, have an estimate of how long they worked,  
12 who was providing the materials, again, for the opportunity for  
13 profit or loss and for level (phonetic) investments. So this  
14 type of information is on these reports, and I don't think  
15 Total Screen Solutions has an objection to producing those  
16 reports now that we've identified what they are. But we do  
17 have a problem that the reports that were produced prior to the  
18 new firm taking over, the new Defense firm, were redacted.  
19 They redacted critical witness's information. You know, part  
20 of what is on these reports is the name of the mud engineer or  
21 company man, other people that they -- the Plaintiffs worked  
22 with and had to check in with, and knowing who that person is,  
23 they're witnesses, they're on sight. They're going to know the  
24 hours, they're going to know all of this stuff.

25 **THE COURT:** And you're talking about the Plaintiffs?

1 Are you talking about the Plaintiffs?

2 **MR. MOULTON:** Yeah. So the Plaintiffs filled out  
3 this report every day about what they did on the job site.

4 **THE COURT:** Okay. Okay. I'm going to --

5 **MR. MOULTON:** I -- I --

6 **THE COURT:** I'm going to grant the Plaintiff's motion  
7 to compel Discovery related to request for production Number 4.  
8 To the extent that --

9 **MR. HARVEY:** Your Honor -- I didn't mean to  
10 interrupt.

11 **THE COURT:** Go ahead, Mr. Harvey.

12 **MR. HARVEY:** Yeah, I was just going to say, your  
13 Honor, you know, we're happy to produce the daily charge  
14 tickets and unredacted daily charge tickets.

15 You know, our objection isn't to that specific  
16 category of documents, that is a specific category of documents  
17 that relate to Plaintiffs at TSS. It's just the remaining part  
18 of the sentence that asks for "all reports submitted, prepared  
19 or signed by the Plaintiffs," and it doesn't even limit those  
20 reports that are "submitted, prepared or signed by the  
21 Plaintiffs to TSS," it's just this "all reports by Plaintiff,"  
22 and that is our issue, your Honor.

23 **THE COURT:** Well --

24 **MR. HARVEY:** And the way -- the way that Mr. Moulton  
25 has narrowed the request in this -- in his argument that he is

1 looking for the daily reports and unredacted daily reports.  
2 If, you know, that's what I've been saying since day one I've  
3 been on the case, I'm happy to produce, I just need you to  
4 narrow your -- your request to those documents, not this  
5 universe, everything in the planet.

6 **THE COURT:** To the daily reports -- to the daily --  
7 unredacted daily reports submitted to TSS.

8 **MR. MOULTON:** And the time reports.

9 **THE COURT:** Go ahead, Mr. --

10 **MR. MOULTON:** The daily time reports as well --

11 **THE COURT:** And what?

12 **MR. MOULTON:** Well, so there's other reports that  
13 they -- that they always submit. There's also the time sheets  
14 or -- I think --

15 **THE COURT:** The charge tickets --

16 **MR. MOULTON:** I think they call them invoices --  
17 yeah, the daily charge tickets are on one form, right, but  
18 there's also a -- you know, "I worked these days on this rig  
19 form," right, daily -- in effect, I'm sorry, it's the timesheet  
20 invoice for -- I need those.

21 Also we have received some new documents from the  
22 Defendants which I can't read, but they appear to be employee  
23 timesheets -- or, I'm sorry, employee schedules. I can't tell,  
24 I can't read them. We want those, too. They look like a  
25 report that signed by the Plaintiffs.



1           **THE COURT:** Mr. Harvey?

2           **MR. HARVEY:** The issue we have, your Honor, is the  
3 time it's taken to try that approach again to discovery. He  
4 has asked for "all reports submitted, prepared and signed by  
5 Plaintiffs." Had he limited those reports to a specific type  
6 of document, except for the daily charge ticket, had he limited  
7 those to just documents that were prepared or submitted to TSS,  
8 and now that we're hearing argument he's trying to narrow those  
9 -- the requests so that it's not overbroad. But, you know, the  
10 fact of the matter is he didn't request those specific  
11 schedules or timesheets, whatever it is that he's talking  
12 about.

13           You know, in our process, clearly we're producing  
14 those that we think are the relevant documents, and I'm happy  
15 to continue producing those, but it just confirms to me that,  
16 you know, he's taken the, you know, just shotgun approach,  
17 we're going to ask for the universe and then expect us to  
18 produce everything. And then when it comes down to argument  
19 with Court, we're going to try to narrow it (indiscernible).  
20 We should have been doing this for a month, narrowing this  
21 category of reports instead of just waiting until now.

22           **THE COURT:** Well, I agree, and my preference -- I  
23 agree with both parties. And I agree that Plaintiff has a  
24 legitimate request for some documents. I -- I'm taking it that  
25 I think, quite frankly, both the Plaintiff -- Plaintiff's

1 Counsel and the Defense Counsel could work through most of  
2 these without having me sit here and go through this with you.  
3 But -- but --

4 **MR. HARVEY:** Your Honor, I would have thought that  
5 would have been the case, but I -- you know, specific to this  
6 request when I offered to produce the relevant report.  
7 Plaintiff, however, refused to narrow the scope. It's just  
8 been waive all of your objections or, you know, we're going to  
9 Court --

10 **THE COURT:** Well, let's not -- just a second. Let's  
11 not take the gloves off and start swinging yet.

12 **MR. MOULTON:** Well, your Honor --

13 **THE COURT:** Let's -- let's keep moving forward and  
14 what I'm going to do shortly is I'm going to call this hearing  
15 to an end shortly and allow the parties to -- to do really what  
16 we should be doing, as what you-all should be doing as  
17 litigators, and that's conferring and working together, and  
18 then getting the Court involved when it's really necessary.

19 So what we're going to --

20 **MR. PIPITONE:** Your Honor -- your Honor, this is Dan  
21 Pipitone. May I make just one quick inquiry?

22 **THE COURT:** Yes. To -- to --

23 **MR. PIPITONE:** If I am understanding what your Honor  
24 is doing, and I've practiced now for 34 years, so I have a  
25 pretty good feel, but what I'm -- what I'm gathering here and I

1 hate to use adjectives so forgive me for my choices, but your  
2 Honor has an expansive and open discovery type philosophy about  
3 things, and that's what I'm gathering from your rulings which  
4 is perfectly fine, I think if the parties understand that then  
5 we can work within that framework as you suggested at the  
6 onset.

7           So if I'm correct in that understanding and I'm also  
8 understanding that that -- that that approach goes both ways;  
9 in other words, that which we ask the Plaintiff should be  
10 fairly open and expansive as well. If that's your Honor's  
11 disposition I think we can work through the rest of these  
12 things and, hopefully, future discovery efforts as well.

13           **THE COURT:** And this is Mr. Pipitone?

14           **MR. PIPITONE:** Yes.

15           **THE COURT:** Okay. Mr. Pipitone, to answer your  
16 question, I am -- I am relatively new to the bench and I'm  
17 coming to terms with my philosophy on discovery matters, and  
18 I'm concerned with costs of litigation and burdening the  
19 parties and -- and many matters, but I am -- I'm working  
20 through these issues myself.

21           But I will tell you, and for the record, that I will  
22 treat the Plaintiff and the Defendants equally and so if my  
23 kind of disposition at this point is being relatively  
24 expansive, I would tell the parties that I will treat the  
25 Defendants' Requests for Production in a similar vein to the

1 extent that I am able to.

2           So with that I think Mr. Pipitone has moved the Court  
3 for a recess to allow the Plaintiff and the Defense Counsel to  
4 work together on the rest of these issues and what I'm going to  
5 do is if -- with regard to the remaining issues that I have not  
6 ruled on, and I'm not going to issue an extensive written  
7 order, there will be a docket order kind of summarizing what  
8 we've done today, a docket entry summarizing what I've done  
9 today.

10           To the extent that there are outstanding discovery  
11 issues, I would ask the Court -- or the parties within 14 days  
12 to submit kind of a joint report indicating what the remaining  
13 discoveries are -- or discovery disputes are with kind of a  
14 synopsis of what the issue is and -- and see if we can go  
15 forward in that manner. Because, quite frankly, I don't think  
16 this -- the way that we're doing it now is a cost-effective  
17 matter -- or cost-effective for the parties. But any objection  
18 to recessing and allowing -- allowing you-all to confer, Mr.  
19 Moulton?

20           **MR. MOULTON:** No, your Honor.

21           **THE COURT:** Okay, Mr. Harvey?

22           **MR. HARVEY:** No, your Honor.

23           **THE COURT:** Okay. Mr. Pipitone, thank you for the  
24 suggestion. I think that was an appropriate way to conclude  
25 our hearing today.

1                   **MR. PIPITONE:** Thank you very much, Judge.

2                   **THE COURT:** Okay. All right, so Court is in recess.

3 If there are remaining issues file a joint Status Report within  
4 14 days of today's date and we'll set it for a hearing.

5                   Court is in recess. Thank you for your appearance.

6                   **(Counsel thank the Court)**

7                   **(This proceeding was adjourned at 4:48 p.m.)**

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in black ink, appearing to read "Toni Hudson", is positioned above a horizontal line.

June 5, 2014

TONI HUDSON, TRANSCRIBER